BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

STEVE L. ALLENDORF)
Claimant)
VS.)
) Docket No. 239,453
A-1 APPLIANCE PLUMBING & HEATING)
Respondent)
AND)
)
CREDIT GENERAL INSURANCE)
Insurance Carrier)

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on March 16, 1999.

ISSUES

The Administrative Law Judge denied claimant's request for preliminary benefits based on finding that claimant failed to give notice within ten days and did not establish just cause for that failure.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Administrative Law Judge should be affirmed. The evidence establishes that claimant had a sudden onset of low back pain while lifting on October 6, 1998. Claimant did not give notice of this accident until November 6, 1998. Claimant had reported some low back soreness to a coworker before the October 6 incident but did not mention the sudden onset of pain while lifting.

Claimant first contends that he did give notice because he told his coworker, Mr. Norman Strawder, that his back was sore. The Board finds this mention of soreness does not constitute notice of an accident. The Board further finds that Mr. Strawder was not in a supervisory position and notice to Mr. Strawder would not satisfy the statute.

Claimant also contends there was just cause for failure to give notice because he thought the low back problem was not that serious and would resolve. But the Board finds that the specific lifting incident was sufficiently severe that claimant should be expected to provide prompt notice.

The Board finds claimant did not give notice in ten days and has not established just cause for failure to give such notice.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on March 16, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this day of June 1999.

BOARD MEMBER

c: James M. Crowl, Topeka, KS John B. Rathmel, Overland Park, KS Brad E. Avery, Administrative Law Judge Philip S. Harness, Director